

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BARBARA UBEL)	
Claimant)	
VS.)	
)	
SAINT MARY HOSPITAL)	Docket No. 205,458
Respondent)	
Self-Insured)	

ORDER

Respondent appealed the preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey dated August 15, 1996, that granted claimant's request for preliminary benefits.

ISSUES

The respondent filed before the Appeals Board a "Request For Review" containing the following issues:

- "1. Compensability."
- "2. Nature and extent of disability."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Appeals Board has reviewed the preliminary hearing record and finds that the preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on August 15, 1996, that granted claimant's request for medical treatment with Dr. Craig York and temporary total disability benefits should be affirmed.

The first issue respondent requested Appeals Board to review is the broad issue labeled compensability. That issue contains a myriad of questions in a workers compensation case which includes, but are not limited to: whether claimant suffered personal injury by accident that arose out of and in the course of her employment, whether timely notice of the accident was given to the employer, and whether claimant served a timely written claim on the employer.

In an attempt to ascertain which one of the many compensability questions the respondent was requesting the Appeals Board to review, the Appeals Board finally determined, from the questions the Special Administrative Law Judge was asking the attorneys' of the parties prior to the preliminary hearing testimony, that respondent denied claimant's back injury was work-related. Accordingly, the only compensability question the Appeals Board will address, in reference to this preliminary hearing Order, is whether claimant's back injury arose out of and in the course of her employment.

Jurisdiction to review a preliminary hearing Order is granted the Appeals Board pursuant to K.S.A. 44-534a, as amended, when there is a dispute of whether the claimant sustained a work-related accidental injury.

A prior preliminary hearing was held in this matter on February 1, 1996. As a result of that hearing, Special Administrative Law Judge William F. Morrissey entered an Order dated February 20, 1996, that authorized Joseph W. Huston, M.D., to treat claimant's back injury. At that hearing, respondent denied claimant had injured her back while working for respondent. Claimant specifically described, during her testimony, that she injured her back on June 23, 1995, when she bent over in the freezer to lift two big frozen roasts that had slid down to the bottom of the rack. Claimant testified she felt something tear and pull apart in her back as she lifted the frozen roasts and turned to hand them to the production dietician whom she had called in to help. Medical records of Richard B. Baker, M.D., were admitted into evidence that indicated during a visit dated August 28, 1995, for treatment of an unrelated knee injury, claimant had complained of back pain. The medical record related that claimant had described an onset of pain in her back when she bent over to lift a piece of roast out of a freezer.

Claimant again testified at the August 7, 1996 preliminary hearing, which is the subject of this appeal. She described the mechanism of her accident that caused her back injury almost identical to the description she had testified to at the previous preliminary hearing. Claimant also testified she had been under the care and treatment of Dr. Huston since the February 20, 1996 preliminary hearing Order. Medical evidence, in the form of off-work slips from Dr. Huston, were admitted into evidence at the hearing. Those slips stated claimant was unable to work from May 1, 1996, June 12, 1996, and July 5, 1996.

Respondent presented no medical evidence or testimony to contradict the evidence presented by the claimant at either hearing. Accordingly, the Appeals Board finds that

claimant has established that it is more likely than not that she suffered accidental injury to her back while working for the respondent on June 23, 1995.

(2) The second issue respondent raised was the nature and extent of claimant's disability. At this juncture of the proceedings, the Appeals Board assumes that the respondent is questioning whether the Special Administrative Law Judge erred in granting claimant's request for temporary total disability benefits. The Appeals Board has previously found, on numerous occasions, that it does not have jurisdiction to review that issue. The Special Administrative Law Judge has specific authority, pursuant to K.S.A. 44-534a, as amended, to grant or deny temporary total disability benefits pending a full hearing on the matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Special Administrative Law Judge William F. Morrissey dated August 15, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c: Steven Hornbaker, Junction City, KS
Frederick L. Haag, Wichita, KS
William F. Morrissey, Special Administrative Law Judge
Bryce Benedict, Administrative Law Judge
Philip S. Harness, Director